

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

0 5 - 7 9 8

United States District Court	District <u>Delaware</u>
Name (under which you were convicted): <u>JARID L. CUBBAGE</u>	Docket or Case No.:
Place of Confinement: <u>Delaware Correctional Center 1181 Paddock Rd. Smyrna, De. 19977</u>	Prisoner No.: <u>SBI 06271683</u>
Petitioner (include the name under which you were convicted) <u>JARID L. CUBBAGE</u>	Respondent (authorized person having custody of petitioner) <u>v. Thomas CARROLL, Warden, Delaware Correctional Center</u>
The Attorney General of the State of <u>Delaware</u>	FILED NOV 17 2005

PETITION

NOV 17 2005

1. (a) Name and location of court that entered the judgment of conviction you are challenging
Superior Court of the State of Delaware, Sussex County,
Georgetown, De. 19947
- (b) Criminal docket or case number (if you know): 020-2007080
2. (a) Date of the judgment of conviction (if you know): October 8, 2002
- (b) Date of sentencing: December 6, 2002
3. Length of sentence: 8 years at Level 5
4. In this case, were you convicted on more than one count or of more than one crime? Yes No
5. Identify all crimes of which you were convicted and sentenced in this case:
Rubbery 1st - 20 years suspended after six years at level 5
PDWDCF - 2 years at level 5
Conspiracy 2nd - 1 year at Level 1 probation
Wearing Narcotic During Commission of Felony - 2 years at Level 2 probation

6. (a) What was your plea? (Check one)

- (1) Not guilty (3) Nolo contendere (no contest)
 (2) Guilty (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

(a) Name of court: Supreme Court of Delaware

(b) Docket or case number (if you know): 005 , 2003

(c) Result: Conviction and Sentence affirmed

(d) Date of result (if you know): June 25 , 2003

(e) Citation to the case (if you know): Cubbage v. State , Del. Supr. , 827 A.2d 30

(f) Grounds raised: The Trial Court Improperly Denied The Defendant's Motion For Judgment of Acquittal and The Evidence Presented Was Insufficient To Sustain The Convictions Against The Defendant

(g) Did you seek further review by a higher state court? Yes No

If yes, answer the following:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Result: N/A

(4) Date of result (if you know): N/A

(5) Citation to the case (if you know): N/A

(6) Grounds raised: N/A

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Superior Court of the State of Delaware, Sussex County

(2) Docket or case number (if you know): 0302007080

(3) Date of filing (if you know): April 27, 2004

(4) Nature of the proceeding: Post Conviction Relief pursuant to Rule 61

(5) Grounds raised: See Attachment "A"

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No

(7) Result: N/A

(8) Date of result (if you know): N/A

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes No

(2) Second petition: Yes No

(3) Third petition: Yes No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: The defendant's Due Process of law was violated when the defense was misled into proceeding to trial unprepared because of nondisclosure

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The State filed two discovery responses with the defense that did not disclose the interview between Detective Hudson and Codefendant William Wilson. At trial, the State entered Wilson's statements into evidence without first disclosing them to the defense.

- (b) If you did not exhaust your state remedies on Ground One, explain why: N/A
-
-
-

(c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

- (2) If you did not raise this issue in your direct appeal, explain why: I was represented by counsel. Superior Court Criminal Rule 411
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(d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post - Conviction motion

Name and location of the court where the motion or petition was filed: Superior Court of Delaware, Sussex County, Georgetown, De. 19947

Docket or case number (if you know): 0202007080

Date of the court's decision: April 13, 2005

Result (attach a copy of the court's opinion or order, if available): Conviction and Sentence were affirmed

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Supreme Court of Delaware Dover, De. 19901

Docket or case number (if you know): Cubbage v. State, 168, 2005

Date of the court's decision: September 20, 2005

Result (attach a copy of the court's opinion or order, if available): Conviction and Sentence were affirmed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

GROUND TWO: The defendant's Right to Confrontation was violated when the trial judge limited the cross-examination of a codefendant

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
The trial judge limited the cross-examination of codefendant Wilson about the 2-d-1-c interview between him and Detective Hudson after Wilson testified he admitted his involvement, talked about the incident and he told the truth during

this interview and prohibited the defense from questioning Wilson about the interview

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: I was represented by counsel. Superior Court Criminal Rule 47

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post - Conviction motion

Name and location of the court where the motion or petition was filed: Superior Court of the State of Delaware, Sussex County, Georgetown, De. 19947

Docket or case number (if you know): 0202007080

Date of the court's decision: April 13, 2005

Result (attach a copy of the court's opinion or order, if available): Conviction and Sentence affirmed

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Supreme Court of Delaware, Dover, De. 19901

Docket or case number (if you know): Cubbage v. State, 168, 2005

Date of the court's decision: September 20, 2005

Result (attach a copy of the court's opinion or order, if available): Conviction and Sentence affirmed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

N/A

GROUND THREE: The defendant's Due Process of Law was violated when the State submitted false and prejudicial evidence to gain a conviction

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
The prosecutor submitted doctored and gloves plus pictures of these items which was not connected to the crime into evidence after his own witness, Detective Hudson, had previously testified that the only evidence he had against the defendant was the Codefendants' statements

(b) If you did not exhaust your state remedies on Ground Three, explain why: N/A

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: I was represented by Counsel. Superior Court Criminal Rule 47

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-conviction motion

Name and location of the court where the motion or petition was filed: Superior Court of the State of Delaware, Sussex County, Georgetown, De. 19947

Docket or case number (if you know): 020200 TC86

Date of the court's decision: April 13, 2005

Result (attach a copy of the court's opinion or order, if available): Conviction and Sentence affirmed

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Supreme Court of Delaware
Dover, De. 19901

Docket or case number (if you know): Cubbage v. State, 168 - 2005

Date of the court's decision: September 20, 2005

Result (attach a copy of the court's opinion or order, if available): Conviction and Sentence affirmed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: N/A

GROUND FOUR: The defendant's Due Process of law was violated due to Prosecutor impermissible cross-examination or defendant's post-arrest silence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The State was allowed to question the defendant about why he failed to mention his alibi at the time of his arrest

(b) If you did not exhaust your state remedies on Ground Four, explain why: N/A

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: I was represented by counsel. Superior Court Criminal Rule 47

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post - Conviction motion

Name and location of the court where the motion or petition was filed: Superior Court of the State of Delaware, Sussex County, Georgetown, De. 19947

Docket or case number (if you know): 0202007080

Date of the court's decision: April 13, 2005

Result (attach a copy of the court's opinion or order, if available): Conviction and Sentence affirmed

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Supreme Court of Delaware Dover, De. 1990

Docket or case number (if you know): Cubbage v. State, 168, 2005

Date of the court's decision: September 20, 2005

Result (attach a copy of the court's opinion or order, if available): Conviction and Sentence affirmed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: N/A

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

N/14

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

N/14

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Thomas Barnett 512 East Market St.
Georgetown, De. 19947

(b) At arraignment and plea: Thomas Barnett 512 East Market St.
Georgetown, De. 19947

(c) At trial: John Brady P.O. Box 251 Georgetown, De. 19947

(d) At sentencing: John Brady P.O. Box 251 Georgetown, N.C. 19947

(e) On appeal: John Brady P.O. Box 251 Georgetown, De. 19947

(f) In any post-conviction proceeding: Jarid Cubbage Pro Se
1181 Paddock Rd. Smyrna, De. 19947

(g) On appeal from any ruling against you in a post-conviction proceeding: Jarid Cubbage
Pro Se 1181 Paddock Rd. Smyrna, De. 19947

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: 5/2

(c) Give the length of the other sentence: 2/2

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* The time during which a properly filed application for State Post Conviction or other collateral review with respect to the pertinent judgement or claim is pending shall not be counted toward any period of limitation under this section.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

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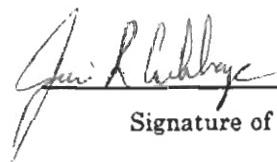
Therefore, petitioner asks that the Court grant the following relief: See Attachment "I"

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on
11-10-05 (month, date, year).

Executed (signed) on 11-10-05 (date).



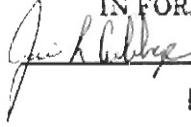
Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. N/A

IN FORMA PAUPERIS DECLARATION


[Insert appropriate court]

* * * * *

Legal Mail

IM Jacid Cubbage
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SMYRNA, DELAWARE 19977



Clerk U.S. District Court

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